IN THE COURT OF APPEALS OF THE STATE OF ALASKA

JAY NELSON JR., Appellant, v. STATE OF ALASKA, Appellee.	Court of Appeals No. A-11771 Trial Court No. 4NE-12-50 CR MEMORANDUM OPINION No. 6296 — March 2, 2016

Appeal from the Superior Court, Fourth Judicial District, Nenana, Bethany Harbison, Judge.

Appearances: David D. Reineke, under contract with the Public Defender Agency, and Quinlan Steiner, Public Defender, Anchorage, for the Appellant. Timothy W. Terrell, Assistant Attorney General, Office of Criminal Appeals, Anchorage, and Craig W. Richards, Attorney General, Juneau, for the Appellee.

Before: Mannheimer, Chief Judge, Allard, Judge, and Suddock, Superior Court Judge.[*]

Judge ALLARD.

Jay Nelson Jr. was tried for felony driving under the influence (DUI) in a bifurcated trial before Superior Court Judge Bethany Harbison. During jury selection,

[*] Sitting by assignment made pursuant to Article IV, Section 16 of the Alaska Constitution and Administrative Rule 24(d).

Nelson moved for a mistrial on the ground that he was prejudiced when prospective jurors were informed that the State would be calling a Division of Motor Vehicles (DMV) employee as a witness during the second stage of his trial. Judge Harbison denied the motion. Later, the jury convicted Nelson of felony DUI.

On appeal, Nelson renews his argument that Judge Harbison erred in denying his motion for a mistrial. According to Nelson, the jurors would have been able to infer that he "had prior legal difficulties regarding his driver's license" based on the fact that a DMV employee would be testifying at his trial. From this inference, he argues, the jurors may have drawn a second inference that he had prior DUI convictions, thus prejudicing their decision in his case.[1]

We believe it unlikely that the jury would have made such an inference. Moreover, even assuming that the trial court erred in denying Nelson's motion for a mistrial, we conclude that Nelson has failed to establish prejudice. The evidence was overwhelming that Nelson committed the DUI with which he was charged. Nelson was stopped after he was observed driving erratically down the Parks Highway at approximately 90 miles per hour. He displayed numerous signs of intoxication and refused to participate in field sobriety tests. At the time of his arrest, Nelson's blood alcohol level was 0.158 — nearly twice the legal limit.[2] Given this record, we conclude that any error in denying Nelson's mistrial motion was harmless.

We accordingly AFFIRM the judgment of the superior court.

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[1] *See Ostlund v. State*, 51 P.3d 938 (Alaska App. 2002).

[2] AS 28.35.030(a)(2).